

1 SENATE BILL 324

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Ben D. Altamirano

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10 AN ACT

11 RELATING TO PAYMENT OF WAGES; INCREASING THE STATE MINIMUM WAGE  
12 IN TWO PHASES; MODIFYING EXEMPTIONS; PREEMPTING LOCAL INCREASES  
13 FOR FIVE YEARS; PRESERVING LOCAL INCREASE ORDINANCES IN EFFECT  
14 ON JANUARY 1, 2007.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955,  
18 Chapter 200, Section 2, as amended) is amended to read:

19 "50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

20 A. "employ" includes suffer or permit to work;

21 B. "employer" includes any individual, partnership,  
22 association, corporation, business trust, legal representative  
23 or any organized group of persons employing one or more  
24 employees at any one time, acting directly or indirectly in the  
25 interest of an employer in relation to ~~any~~ an employee, but

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1 shall not include the United States [~~the state or any political~~  
2 ~~subdivision thereof~~]; and

3 C. "employee" includes [~~any~~] an individual employed  
4 by [~~any~~] an employer, but shall not include:

5 (1) [~~any~~] an individual employed in domestic  
6 service in or about a private home;

7 (2) [~~any~~] an individual employed in a bona  
8 fide executive, administrative or professional capacity and  
9 [~~foremen~~] forepersons, superintendents and supervisors;

10 (3) [~~any~~] an individual employed by the United  
11 States [~~or by the state or any political subdivision thereof~~];

12 (4) [~~any~~] an individual engaged in the  
13 activities of an educational, charitable, religious or  
14 nonprofit organization where the employer-employee relationship  
15 does not, in fact, exist or where the services rendered to such  
16 organizations are on a voluntary basis. The employer-employee  
17 relationship shall not be deemed to exist with respect to [~~any~~]  
18 an individual being served for purposes of rehabilitation by a  
19 charitable or nonprofit organization, notwithstanding the  
20 payment to the individual of a stipend based upon the value of  
21 the work performed by the individual;

22 (5) [~~salesmen~~] salespersons or employees  
23 compensated upon piecework, flat rate schedules or commission  
24 basis;

25 (6) students regularly enrolled in primary or

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1 secondary schools working after school hours or on vacation;

2 (7) registered apprentices and learners  
3 otherwise provided by law;

4 (8) persons eighteen years of age or under who  
5 are not students in a primary, secondary, vocational or  
6 training school;

7 (9) persons eighteen years of age or under who  
8 are not graduates of a secondary school;

9 (10) persons employed by ambulance services;

10 (11) G.I. bill trainees while under training;

11 (12) seasonal employees of ~~[any]~~ an employer  
12 obtaining and holding a valid certificate issued annually by  
13 the ~~[state labor commissioner]~~ director of the labor and  
14 industrial division of the labor department. The certificate  
15 shall state the job designations and total number of employees  
16 to be exempted. In approving or disapproving an application  
17 for a certificate of exemption, the ~~[commissioner]~~ director  
18 shall consider the following:

19 (a) whether such employment shall be at  
20 an educational, charitable or religious youth camp or retreat;

21 (b) that such employment will be of a  
22 temporary nature;

23 (c) that the individual will be  
24 furnished ~~[his]~~ room and board in connection with such  
25 employment, or if the camp or retreat is a day camp or retreat,

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1 the individual will be furnished board in connection with such  
2 employment;

3 (d) the purposes for which the camp or  
4 retreat is operated;

5 (e) the job classifications for the  
6 positions to be exempted; and

7 (f) any other factors that the  
8 [~~commissioner~~] director deems necessary to consider;

9 (13) any employee employed in agriculture:

10 (a) if [~~such~~] the employee is employed  
11 by an employer who did not, during any calendar quarter during  
12 the preceding calendar year, use more than five hundred man-  
13 days of agricultural labor;

14 (b) if [~~such~~] the employee is the  
15 parent, spouse, child or other member of [~~his~~] the employer's  
16 immediate family; for the purpose of this subsection, the  
17 employer shall include the principal stockholder of a family  
18 corporation;

19 (c) if [~~such~~] the employee: 1) is  
20 employed as a hand-harvest laborer and is paid on a piece-rate  
21 basis in an operation [~~which~~] that has been, and is customarily  
22 and generally recognized as having been, paid on a piece-rate  
23 basis in the region of employment; 2) commutes daily from [~~his~~]  
24 the employee's permanent residence to the farm on which [~~he~~]  
25 the employee is so employed; and 3) has been employed in

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1 agriculture less than thirteen weeks during the preceding  
2 calendar year;

3 (d) if [~~such~~] the employee, other than  
4 an employee described in Subparagraph (c) of this paragraph:

5 1) is sixteen years of age or under and is employed as a hand-  
6 harvest laborer, is paid on a piece-rate basis in an operation  
7 [~~which~~] that has been, and is generally recognized as having  
8 been, paid on a piece-rate basis in the region of employment;  
9 2) is employed on the same farm as [~~his~~] the employee's parent  
10 or person standing in the place of [~~his~~] the parent; and 3) is  
11 paid at the same piece-rate as employees over age sixteen are  
12 paid on the same farm; or

13 (e) if [~~such~~] the employee is  
14 principally engaged in the range production of livestock or in  
15 milk production; [~~or~~]

16 (14) an employee engaged in the handling,  
17 drying, packing, packaging, processing, freezing or canning of  
18 any agricultural or horticultural commodity in its  
19 unmanufactured state; or

20 [~~(14)~~] (15) employees of charitable, religious  
21 or nonprofit organizations who reside on the premises of group  
22 homes operated by such charitable, religious or nonprofit  
23 organizations for mentally retarded or emotionally or  
24 developmentally disabled persons."

25 Section 2. Section 50-4-22 NMSA 1978 (being Laws 1955,

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1 Chapter 200, Section 3, as amended by Laws 2005, Chapter 302,  
2 Section 1 and by Laws 2005, Chapter 306, Section 1) is amended  
3 to read:

4 "50-4-22. MINIMUM WAGES.--

5 A. An employer [~~except as provided in Section~~  
6 ~~50-4-21 NMSA 1978~~] shall pay an employee the minimum wage rate  
7 of [~~five dollars fifteen cents (\$5.15) an hour except that~~] six  
8 dollars fifty cents (\$6.50) an hour. As of January 1, 2009, an  
9 employer shall pay the minimum wage rate of seven dollars fifty  
10 cents (\$7.50) an hour.

11 B. An employer furnishing food, utilities, supplies  
12 or housing to an employee who is engaged in agriculture may  
13 deduct the reasonable value of such furnished items from any  
14 wages due to the employee.

15 [~~B.~~] C. An employee [~~subject to Subsection A of~~  
16 ~~this section~~] who customarily and regularly receives more than  
17 thirty dollars (\$30.00) a month in tips shall be paid a minimum  
18 hourly wage of two dollars thirteen cents (\$2.13). The  
19 employer may consider tips as part of wages, but the tips  
20 combined with the employer's cash wage shall not equal less  
21 than [~~five dollars sixty cents (\$5.60) per hour~~] the minimum  
22 wage rate as provided in Subsection A of this section. All  
23 tips received by such employees shall be retained by the  
24 employee, except that nothing in this section shall prohibit  
25 the pooling of tips among employees.

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1           [~~G.~~] D. An employee [~~subject to the provisions of~~  
2 ~~Subsection A of this section~~] shall not be required to work  
3 more than forty hours in any week of seven days, unless the  
4 employee is paid one and one-half times the employee's regular  
5 hourly rate of pay for all hours worked in excess of forty  
6 hours. For an employee who is paid a fixed salary for  
7 fluctuating hours and who is employed by an employer a majority  
8 of whose business in New Mexico consists of providing  
9 investigative services to the federal government, the hourly  
10 rate may be calculated in accordance with the provisions of the  
11 federal Fair Labor Standards Act of 1938 and the regulations  
12 pursuant to that act; provided that in no case shall the hourly  
13 rate be less than the federal minimum wage."

14           Section 3. A new section of the Minimum Wage Act is  
15 enacted to read:

16           "[NEW MATERIAL] TEMPORARY STATE PREEMPTION--SAVING  
17 CLAUSE.--

18           A. Except as provided in Subsection B of this  
19 section, cities, counties, home rule municipalities and other  
20 political subdivisions of the state shall not adopt or continue  
21 in effect any law or ordinance that would mandate a minimum  
22 wage rate higher than that set forth in the Minimum Wage Act.  
23 The provisions of this subsection expire on January 1, 2013.

24           B. A local law or ordinance, whether advisory or  
25 self-executing, in effect on January 1, 2007 that provides for

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1 a higher minimum wage rate than that set forth in the Minimum  
2 Wage Act shall continue in full force and effect until  
3 repealed."

4 Section 4. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is January 1, 2008.

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